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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,444	11/14/2003	Clifford D. Bennett	DBZ / 438P2	9620

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EXAMINER

LAUX, JESSICA L

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/713,444	Applicant(s) BENNETT, CLIFFORD D.	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) 5 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/02/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121: .

- I. Claims 1-17, drawn to a multi-level chair for supporting a post-tension cable, classified in class 52.
- II. Claims 18-19, drawn to a method of supporting a post-tension cable, classified in class 52.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process for using the product as claimed can be practiced with another materially different product such as a post-tension cable support in the shape of a cylinder with receptacle for retaining the cable.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Claim 1 is generic to the following disclosed patentably distinct species:

Species I – Figures 3-4

Species II – Figure 5

Species III – Figure 6

Species IV – Figure 7.

The species are independent or distinct because: Species I requires an inverted V shape with a V cross section and feet, wherein it is also stackable; Species II requires a triangular shape with supports and a zig-zag slot with receptacles for a cable; Species III requires a triangular shape with supports and a straight slot with receptacles for a cable; Species IV requires an inverted V shape with a base. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with Mr. Poffenberger on 03/06/2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-17 and Species I, Figures 3-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-19 are withdrawn from further

consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Lines 14 and 15 of page 17 state "feet are joined by a base plate" which has not been disclosed in the specification or drawings.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-4, 6-10, 12-14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanson et al. (4644727).

In regards to claim 1: Hanson et al. teaches a multi-level chair for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair (Figure 10) comprising: a body having a plurality of receptacles (Figure 1, elements 12; Figure 5, element 30) at different heights from the

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bottom of the concrete form (Figure 10, where element 31 is at the top of the chair and elements 12 are at the bottom), said receptacles being adapted to support a post-tension reinforcement cable of a predetermined diameter (Col. 2, lines 21-22).

In regards to claim 2: The multi-level chair of claim 1 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 3: The multi-level chair of claim 1 above, wherein said body has an inverted V-shape (Figure 10) including a pair of legs extending downwardly from an apex of said body. Where the apex is at element 30 and the legs are elements 34 and 32.

In regards to claim 4: The multi-level chair of claim 3 above, wherein said receptacles are at staggered heights along said legs (Figure 10, where the receptacles 31 and 12 are at different elevations of the chair with 31 being the uppermost).

In regards to claim 6: Hanson et al. teaches a multi-level chair (Figure 10) for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising: an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), said body having multiple receptacles at different heights from the bottom of the concrete form along said legs (Figure 1, elements 12; Figure 5, element 30), each of said receptacles being sized to support said post-tension reinforcement cable (Col. 2, lines 21-22) so that a user may place said post-tension cable in a selected one of said receptacles.

In regards to claim 7: The multi-level chair of claim 6 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 8: The multi-level chair of claim 6 above, wherein said receptacles are identically sized (Figure 3, which depicts the receptacle used in the chair).

In regards to claim 10: The multi-level chair of claim 6 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

In regards to claim 12: Hanson et al. teaches a multi-level chair for supporting a concrete reinforcement cable under tension at a fixed height from a bottom of a concrete form, said multi-level chair comprising: an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), each of said legs having a fixed length and multiple receptacles at different heights (Figure 1, elements 12; Figure 5, element 30) from the bottom of the concrete form along said length of said leg for supporting said reinforcement cable (Col. 2, lines 21-22), wherein a user may support said reinforcement cable in a selected receptacle.

In regards to claim 13: The multi-level chair of claim 12 above, wherein said body is injection molded plastic (Col. 2, lines 65-66). In regards to claim 14: The multi-level chair of claim 12 above, wherein each of said legs terminates in a foot (element 18).

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In regards to claim 17: The multi-level chair of claim 12 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727). Hanson et al. teaches a tension cable chair as in claims 6 and 12 above. Hanson is silent as to the distance between cable receiving receptacles. Applicant has not disclosed that having the receptacles spaced $\frac{1}{4}$ or $\frac{1}{2}$ inches apart solves any stated problem or is for any particular purpose. Moreover, it appears that the chair and receptacles of Hanson et al., or applicant's invention, would perform equally well with the receptacles spaced any distance. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Hanson such that the receptacles be spaced $\frac{1}{4}$ or $\frac{1}{2}$ inches apart because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Hanson.

Allowable Subject Matter

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Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JL
03/09/2006



Naoko Slack
Primary Examiner